

FILED

OCT 27 2005

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
MODESTO DIVISION

In re)	
)	Case No. 05-90582-A-13
In re DWIGHT M. TRYON, DDS,)	
)	
Debtor.)	
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DWIGHT M. TRYON, DDS,)	Adversary No. 05-9055
)	
Plaintiff,)	
)	
v.)	
)	
NETBANK BUSINESS FINANCE,)	
f.k.a. REPUBLIC LEASING)	
COMPANY, and CITICORP VENDOR)	
FINANCE, INC.,)	
)	
Defendants.)	
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MEMORANDUM DECISION

Chapter 13 debtor Dwight M. Tryon, D.D.S., and creditors Citicorp Vendor Finance, Inc., an assignee of Choice Health Leasing ("Citicorp"), and Netbank Business Finance, formerly known as Republic Leasing Company ("Netbank") (Citicorp and Netbank are collectively referred to as "Creditors") seek a determination of the priority of their liens against the debtor's business personal property, consisting of office and dental equipment, account receivables, and the proceeds from those items ("Property"). The court has valued the Property at \$42,982.48. This includes \$500 of office equipment, \$11,770 of dental

1 equipment, and \$30,712.48 of proceeds from account receivables.

2 This matter initially came before the court in the form of
3 three motions to value collateral and determine the secured
4 status of the claims of Union Federal Bank ("Union"), Netbank,
5 and Citicorp (docket control numbers SSA-2, SSA-3, and SSA-4,
6 respectively).

7 Union previously agreed that its security interest is in
8 third priority position, after the Citicorp and Netbank liens.
9 Given the amounts owed to Citicorp and Netbank and the value of
10 the Property, Union does not dispute that its claim is unsecured.
11 See 11 U.S.C. § 506(a).

12 Thus, the only remaining issue is the relative priority of
13 the Citicorp and Netbank liens. While the valuation of
14 collateral may be determined in the context of a contested
15 matter, the determination of the priority of these liens requires
16 an adversary proceeding. See Fed. R. Bankr. P. 3012, 7001(2),
17 9013, 9014(a). With the stipulation of the Creditors and debtor,
18 the court deemed the motions, insofar as they sought to determine
19 the priority of the Creditors' liens, to be an adversary
20 proceeding. The parties waived further discovery, stipulated to
21 the facts outlined below, and submitted the matter for the
22 court's decision.

23 Citicorp perfected its security interest in the Property by
24 filing a financing statement with the California Secretary of
25 State on March 13, 2002. Citicorp filed two more financing
26 statements in April 2002 and May 2003, but the parties agree that
27 those later financing statements are immaterial to the court's
28 analysis and the result.

1 Netbank perfected its security interest in the Property by
2 filing a financing statement with the California Secretary of
3 State on July 8, 2002.

4 Netbank argues that Citicorp did not properly perfect its
5 security interest in the Property because: (1) the underlying
6 written loan agreement between Citicorp and debtor ("Agreement"),
7 attached to the financing statement, is not dated and hence the
8 filing did not comply with the 20-day requirement of Cal. Comm.
9 Code § 9315(d); and (2) the financing statement does not properly
10 identify the Agreement, making the financing statement
11 misleading.

12 Citicorp, on the other hand, contends that it filed its
13 financing statement timely and that the financing statement is
14 not misleading and contains all of the information necessary to
15 perfect its security interest.

16 A security interest is perfected when it has "attached" and
17 when "all of the applicable requirements for perfection in
18 Sections 9310 to 9316, inclusive, have been satisfied." See Cal.
19 Comm. Code § 9308(a).

20 In order for a security interest to attach, the secured
21 party must have given value, the debtor must have rights in the
22 collateral, and the debtor have signed or otherwise
23 "authenticated" a written security agreement describing the
24 collateral. See Cal. Comm. Code § 9203.

25 Citicorp's security interest attached on or about March 11,
26 2002. On that date, the debtor received \$55,000 from Citicorp.
27 The loan was made pursuant to the terms of the Agreement. The
28 debtor signed that Agreement. In it, he promised to repay the

1 \$55,000 and he secured his promise with existing and after-
2 acquired dental and office equipment and accounts receivable.
3 Hence, it is clear that value was given, the debtor owned the
4 collateral for the loan, and the debtor signed a written security
5 agreement that identified the collateral for the loan.

6 NetBank notes that the Agreement is undated. This does not
7 affect the attachment of Citicorp's security interest. Nothing
8 in Cal. Comm. Code § 9203 requires that the written security
9 agreement be dated. And, it is possible to ascertain from the
10 paperwork accompanying the written loan agreement that it was
11 signed sometime between March 6, the date the debtor applied for
12 the loan, and March 11, 2002, the date the loan funded. The
13 court also notes that the loan agreement was sent by facsimile to
14 or from the debtor on March 7. The court concludes that the
15 Agreement was signed by the debtor on March 7.

16 As relevant to this case, perfection of a security interest
17 requires the filing of a financing statement with the California
18 Secretary of State. See Cal. Comm. Code § 9310(a). The contents
19 of a financing statement are prescribed by Cal. Comm. Code §
20 9502(a). The financing statement must identify the debtor and
21 the secured creditor, and describe the collateral covered by the
22 financing statement. See Cal. Comm. Code § 9502(a). A
23 description of the obligation secured by the collateral is not
24 required. Id.

25 Citicorp's financing statement satisfies these statutory
26 requirements. In its financing statement, Citicorp named its
27 debtor and identified itself as the secured party. The
28 description of its collateral included accounts, general

1 intangibles, equipment and "[p]roceeds . . . of any of the
2 foregoing."

3 As to proceeds derived from this collateral, Cal. Comm. Code
4 § 9315(c) provides that a security interest in proceeds is
5 perfected "if the proceeds in the original collateral was
6 perfected." Hence, Citicorp's security interest in proceeds was
7 also perfected by its perfection of its security interest in the
8 original collateral, i.e., the debtor's accounts.

9 Next, Netbank argues that because Citicorp misidentified in
10 the financing statement the secured obligation as a lease rather
11 than a loan, the financing statement is somehow deficient and did
12 not perfect Citicorp's security interest. While the description
13 of the secured obligation of the lease may (or may not) have been
14 accurate, this did not nullify the effectiveness of the financing
15 statement for three reasons.

16 First, as already noted, nothing in Cal. Comm. Code §
17 9502(a) requires that the secured obligation be mentioned or
18 described.

19 Second, assuming that the secured obligation was
20 misidentified, Netbank nonetheless had notice that Citicorp
21 claimed a security interest in the identified collateral. It
22 could make no difference to Netbank what kind of obligation was
23 secured by the collateral.

24 Third, Netbank essentially argues that it is unusual for an
25 equipment lease to be secured by anything other than the
26 equipment that is the subject of the lease. It may be correct.
27 However, nothing prohibits a lessor from taking a security
28 interest in other assets, such as accounts receivable, to secure

1 the lessee's performance under the lease.

2 Had Netbank made an inquiry with Citicorp and been told that
3 no lease existed, this might have some basis to assert estoppel
4 against Citicorp. Netbank admits, however, that it made no
5 inquiry of Citicorp regarding the financing statement before
6 perfecting its own security interest in the Property.

7 Consequently, the court can discern no relevance to a possible
8 misidentification of the secured obligation as a lease in the
9 financing statement.

10 Netbank also argues that because the Agreement is undated,
11 Citicorp cannot prove that it has complied with the 20-day
12 requirement of Cal. Comm. Code § 9315(d).

13 Netbank misunderstands the applicability of Cal. Comm. Code
14 § 9315(d). Section 9315(d) merely provides that a creditor's
15 security interest in proceeds becomes unperfected on the 21st day
16 after the security interest attaches to the proceeds unless
17 certain conditions are met.

18 In this case, all parties have assumed that the debtor's
19 accounts receivable are proceeds. They are not for the simple
20 reason that the debtor is not selling inventory or any other
21 tangible property. The debtor is a dentist. He sells his
22 services. No one has a security interest in those services.
23 Hence, there are no proceeds from the "sale, lease, license,
24 exchange, or other disposition of collateral." Cal. Comm. Code §
25 9102(a)(64). Rather, the debtor's accounts receivable, both
26 those existing when the loan was made and those later acquired by
27 the debtor, were merely personal property that could be made
28 security for the loan. Citicorp perfected a security interest in

1 this asset.

2 However, even if the accounts receivable generated after the
3 loan can be characterized as proceeds, Citicorp's security
4 interest in them remains perfected.

5 First, Citicorp has satisfied the requirements of section
6 9315(d)(1). That is, the proceeds are not cash, Citicorp has a
7 perfected security interest in its original collateral, and the
8 proceeds, accounts receivable generated by the debtor's business,
9 are collateral in which a security interest may be perfected by
10 filing in the office where Citicorp filed its financing
11 statement.

12 Second, section 9315(d) does not bar a creditor from
13 perfecting its security interest subsequent to the 21st day after
14 attachment. Hence, even if Citicorp's financing statement was
15 filed after the 21st day of attachment, the financing statement
16 still perfected Citicorp's interest prospectively. Citicorp's
17 financing statement was filed on March 13, 2002 and Netbank did
18 not file a financing statement prior to March 13, 2002. Hence,
19 the possibility that Citicorp's security interest may have been
20 unperfected for some period prior to March 13, 2002 is
21 irrelevant.

22 Finally, the financing statement is dated within 20 days of
23 the Agreement. The date on the financing statement is March 13,
24 2002, whereas the exhibits to the Agreement and the declaration
25 submitted by Citicorp indicate that debtor signed it on March 7,
26 2002.

27 Based on the foregoing, the court concludes that Citicorp
28 perfected its security interest in the Property when it filed the

1 financing statement on March 13, 2002. Pursuant to the "first in
2 time of filing or perfection" rule of Cal. Comm. Code §
3 9322(a)(1), the court determines that Citicorp's security
4 interest in the Property has priority over Netbank's security
5 interest. Further, because the Property has a value of less than
6 the amount owed to Citicorp, application of 11 U.S.C. § 506(a)
7 makes Citicorp's claim secured up to \$42,982.48 and unsecured for
8 the balance and it makes Netbank's claim completely unsecured.

9 Citicorp shall lodge a judgment consistent with this
10 decision. It will be entered once the debtor pays the filing fee
11 for this adversary proceeding.

12 Dated: October 27, 2005

13 By the Court

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15 _____
16 Michael S. McManus, Chief Judge
17 United States Bankruptcy Court
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CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

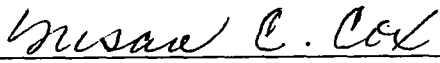
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Dated: October 27, 2005



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